



W.P.(MD)No.9464 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.(MD)No.9464 of 2015

S.Devadhasan

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli.

2.The General Manager,
Tamil Nadu State Transport Corporation,
Ranithottam, Nagercoil,
Kanyakumari District.

... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the files of the second respondent pertaining to its order bearing Kurippu No.10986/Legal 2/Tha A Po Ka/2014 dated 07.05.2015 and to quash the same and consequently direct the respondents to grant promotion as Checking Inspector on par with the



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employees by named R.Madhavan Nair, K.Kesari Selvaraj and P.Raju, who were appointed along with the petitioner and before the juniors by named M.Rajan Babu EDP No.1039 and C.Soundarapandian EDP No. 1038 respectively who were promoted on 23.06.2014 and all other service and monetary benefits with arrears along with the interest to the petitioner forthwith.

For Petitioner : Mr.S.Sivakumar
For Respondent : Mr.K.Sathiya Singh
Standing Counsel for TNSTC
for R1 and R2

ORDER

This Writ Petition has been filed to call for the records relating to the order passed by the second respondent in Kurippu No.10986/Legal 2/Tha A Po Ka/2014 dated 07.05.2015, quash the same, direct the respondents to grant promotion to the petitioner as Checking Inspector on par with the employees namely R.Madhavan Nair, K.Kesari Selvaraj and P.Raju, who were appointed along with the petitioner and before his juniors namely M.Rajan Babu and C.Soundarapandian, who were



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promoted on 23.06.2014, and grant all other service and monetary benefits with arrears along with interest to the petitioner forthwith.

2. The learned counsel appearing for the petitioner submitted that a charge memo was issued to the petitioner and three other persons for the reason that they prevented the employees of the respondent Corporation from receiving the performance incentive. Though there is no evidence to support this claim in the oral enquiry, the petitioner was slapped with the punishment of stoppage increments with cumulative effect for three years. Challenging this order, the Union has filed a petition in I.D.No.20 of 1998 before the Labour Court, Nagercoil. The Labour Court has set aside the order passed by the second respondent. Against the award passed by the Labour Court, the respondents have filed a writ petition in W.P(MD).No.5942 of 2011 before this Court and the same was ended in dismissal confirming the award passed by the Labour Court in I.D.No.20 of 1998. The petitioner has completed 30 years of service from the date of his appointment on 28.12.1994. However, his name was not considered for promotion to the post of



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Checking Inspector. But, his juniors namely C.Soundarapandian and M.Rajan Babu were given promotion on 23.06.2014, though they were appointed on 07.08.1985. Hence, the petitioner has given a representation to the respondents on 19.05.2014, however, the same was not considered. Therefore, he has filed a writ petition in W.P(MD).No. 11458 of 2014 to consider his representation dated 19.05.2014 and an order was passed on 24.07.2014 by this Court directing the second respondent to pass orders on merits and in accordance with the relevant service Regulations. However, the respondents have not obeyed the order of this Court. Hence, the petitioner has filed a contempt petition in Cont.P(MD).No.473 of 2015 and a statutory notice was ordered to the second respondent. Thereafter, the second respondent has passed the impugned order on 07.05.2015 to defeat the claim of the petitioner.

3. It is submitted by the learned counsel appearing for the petitioner that the persons, who were having only 25 years of service, were promoted as Checking Inspectors. Despite the petitioner has completed 30 years of service, he was not given promotion. Therefore,



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this writ petition has been filed to grant promotion to the petitioner as Checking Inspector on par with the employees namely R.Madhavan Nair, K.Kesari Selvaraj and P.Raju, who were appointed along with the petitioner and before his juniors namely M.Rajan Babu and C.Soundarapandian, bearing EDP.No.1039 and 1038 respectively.

4. The learned counsel appearing for the respondents submitted that the promotion of the Checking Inspector is being given in the respondents Transport Corporation to the conductors, who have got three reviews after completion of 25 years of qualifying service. As per the Review seniority, the petitioner had taken leave nearly 10 months on loss of pay which was treated as non-qualifying service. Apart from that, the punishment of postponement of increment with cumulative effect for three years was issued. This resulted in arriving the third review of the individual in a latter date (i.e.,) with effect from 01.05.2010 from that of one R.Madhavan Nair and P.Raju, who have got the third review with effect from 01.08.2009 respectively and K.Kesari Selvaraj, who got the third review with effect from 01.11.2009. However, the name of the



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petitioner was placed in the right place and he was promoted as Checking Inspector at the right time.

5. This Court considered the rival submissions made on behalf of the parties and perused the records available on record.

6. From the facts narrated above, it is not in dispute that there was disciplinary proceedings initiated against the petitioner and the punishment of stoppage of three increments with cumulative effect for three years was imposed. This was challenged by the Union in I.D.No.20 of 1998 before the Labour Court, Nagercoil and the same was allowed. Thereafter, the respondents have filed a writ petition in W.P(MD).No. 5942 of 2011 against the award passed in I.D.No.20 of 1998 and the same was dismissed by confirming the award passed in I.D.No.20 of 1998. Therefore, the punishment imposed against the petitioner is no longer a bar to consider him for promotion.



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7. The grievance of the petitioner is that after filing the writ petition in W.P(MD).No.11458 of 2014 by him with a prayer to consider his representation dated 19.05.2014, an order was passed by the second respondent on 07.05.2015 stating that “the seniority list was already prepared; that it would take some time to prepare the seniority list by including the name of the petitioner; that the respondent Corporation is facing financial crisis; that after the financial crisis is set right, his claim would be considered and that monetary benefits would be paid”. Therefore, his representation dated 19.05.2014 was rejected. This reason in the considered view of this Court, is not proper and legal.

8. The Transport Corporation cannot say that the relief sought for by the petitioner cannot be granted for the reason that the seniority list was already prepared and it would take some time to prepare a fresh seniority list. Citing the financial crisis, rejection of the claim of the petitioner is not proper. When the batch-mates of the petitioner, namely, R.Madhavan Nair, K.Kesari Selvaraj and P.Raju, completed the three



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reviews in 2009, it is not known as to why the reviews of the petitioner got delayed till 01.05.2010. The claim of the respondents that since the petitioner was in leave for 10 months on loss of pay, his leave was treated as non-qualifying service, cannot be considered. There is no rule supporting this claim made by the respondents.

9. This apart, it is brought to the notice of this Court that in the subsequent seniority list prepared on 22.04.2015, the name of the petitioner is not included. It shows that the respondents deliberately denied the promotion to the petitioner. Therefore, this Court directs the respondents to give effect the promotion of the petitioner as Checking Inspector on par with the employees, namely, R.Madhavan Nair, K.Kesari Selvaraj and P.Raju, who were appointed along with the petitioner and before his juniors, namely, M.Rajan Babu and C.Soundarapandian, with all other service and monetary benefits.



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10. Accordingly, the Writ Petition stands allowed and the order passed by the second respondent in Kurippu No.10986/Legal 2/Tha A Po Ka/2014 dated 07.05.2015 is quashed. No costs.

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Internet: Yes/No

Index : Yes/No

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To

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